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## Beijing High Court invalidates trademark pre-emptively registered by squatter under Article 15(2)

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<https://www.worldtrademarkreview.com/article/beijing-high-court-invalidates-trademark-pre-emptively-registered-squatter-under-article-152>

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- Article 15(2) addresses bad-faith cases where a trademark applicant had "contractual, business or other relations" with the owner of an unregistered mark
- The defendant, having requested product quotations from the plaintiffs, had had business contacts, or at least "other relations", with them
- The registration of the contested mark for goods identical or similar to those covered by the plaintiffs' mark violated Article 15(2)

On 12 June 2023 the Beijing High Court rendered a decision finding that a trademark squatter that had not entered into business relations with the brand owner should be deemed as having "other relations" with the latter, as prescribed by Article 15(2) of the 2013 China Trademark Law. This clause was added to the law in 2013 to address cases of bad faith where a trademark applicant, even though it is not the agent or representative of the owner of an unregistered trademark, had "contractual, business or other relations" with it, so that it would "definitively know of the existence of this trademark".

### Background

On 31 August 2016 Hefei Haichang Electrical Technology Ltd ('Haichang') filed a trademark application for the sign RAYCAP (depicted below) for "counters, power supply material (wires, cables), distribution boxes (electric), surge protective devices, lightning rods and lightning arresters" in Class 9. The sign was registered on 28 October 2017.

**Raycap**

This mark was already used, but not registered, in China for lightning arresters and other products, by Raycap Intellectual Property Ltd (Raycap IP) and Suzhou Raycap Protective Device Ltd (Suzhou Raycap). Raycap IP and Suzhou Raycap filed a request for the invalidation of the contested trademark, citing Articles 15(2), 32 and 44(1) of the 2013 Trademark Law.

### Decisions

On 3 June 2020 the China National Intellectual Property Administration (CNIPA) ruled in favour of Haichang and maintained the registration of the contested mark for all designated goods. Raycap IP and Suzhou Raycap brought an administrative lawsuit before the Beijing IP Court, but later dropped the claim based on Article 44(1).

On 24 September 2021 the Beijing IP Court partially upheld the plaintiffs' claims on the following grounds:

Prior to the application date of the contested trademark, the plaintiffs had already used the RAYCAP trademark on lightning arresters and other products, and Haichang, having requested and received product quotations from Suzhou Raycap, had had business contacts, or at least "other relations", with the plaintiffs and was clearly aware

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The contested trademark was identical to the plaintiffs' RAYCAP trademark, and the designated goods "power supply material (wires, cables), distribution boxes (electric), surge protectors, lightning rods and lightning arresters" were either identical or similar to those covered by the plaintiffs' mark due to their close association in function. Therefore, the registration of the contested trademark for these goods violated the provision of Article 15(2) of the law; however, the registration of the mark for the remainder of the goods (counters), which were dissimilar to the plaintiffs' lightning arresters, did not.

Moreover, the court held that the registration of the contested trademark for the same or similar goods also infringed Raycap IP's earlier trade name rights and earlier used trademark, which had generated a certain influence in terms of lightning arresters in China (Article 32).

The Beijing IP Court thus ordered the CNIPA to remake its decision. The CNIPA appealed and the appeal was dismissed by the Beijing High Court.

#### Comment

This case is an example that "other relations" under Article 15(2) could serve as a catch-all clause for owners of earlier trademarks to fall back on, when the latter can prove that the squatters had knowledge of the trademarks based on their sporadic interactions, or even a one-off exchange, which do not qualify as contractual or business relations.